IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07/03/2003

CORAM

THE HON'BLE MR. JUSTICE P. SHANMUGAM
and
THE HON'BLE MR. JUSTICE M. CHOCKALINGAM

Writ Petition No.11982 of 1999 and Writ Petition No. 1714 of 2003

W.P. No.11982 of 1999

Sri Premananda Trust
Premananda Ashram
Melapachakudi Village
Fathima Nagar
Viralimalai - Via
Pudukkottai District
rep. by its Managing Trustee
Dhamayanthi Mathaji. .. Petitioner

-Vs-

1. The District Collector
Pudukkottai.

2. The District Collector
Tiruchirappalli.

3. The Tahsildar
Tiruchirappalli.

4. The Branch Manager
Indian Overseas Bank
Main Branch
Tiruchirappalli - 2.

5. Swamy Premananda

6. The Branch Manager
State Bank of Mysore
Tiruchirappalli - 2. .. Respondents

W.P. No.1714 of 2003 :

Sri Premananda Trust
Premananda Ashram
Melapachakudi Village
Fathima Nagar
Viralimalai - Via
Pudukkottai District
rep. by its Managing Trustee
Dhamayanthi Mathaji. .. Petitioner

vs.

1. The District Collector
Pudukkottai.

2. The District Collector
Tiruchirappalli.

3. The Tahsildar
Kulathur at Keeranur
Pudukkottai District.

4. The Tahsildar
Tiruchirappalli.

5. The Inspector of Police
Crime Branch C.I.D.
Pudukkottai.

6. The Branch Manager
Indian Overseas Bank
Main Branch
144, West Boule Ward Road
L.L.A. Building
Tiruchirappalli - 620 002.

7. The Branch Manager
Punjab National Bank
Sethurappatti Village
Fathimanagar Post
Tiruchirappalli - 621 316.

8. The Branch Manager
State Bank of Mysore
153-A First Floor
"V" Complex
West Boule Ward Road
Tiruchirappalli - 620 002.

9. The Branch Manager
Indian Overseas Bank

Nachalur
Tiruchirappalli - 639 112.

10.The Branch Manager
Canara Bank
Innamkulathur
Tiruchirappalli - 621 303.

11.The Branch Manager
Indian Overseas Bank
No.1/108, North Car Street
Viralimalai - 621 316
Pudukkottai District.

12.The Branch Manager
Indian Bank
No.2/15, East Car Street
Viralimalai - 621 316
Pudukkottai District.

13.Swamy Premananda .. Respondents

PRAYER : Writ Petitions under Article 226 of the Constitution of India praying to issue Writs of Certiorari as stated therein.

For Petitioner : Mr. S. Kasirajan

For Respondents : Mr. A. Navaneethakrishnan,
Addl. Public Prosecutor.

Mr. P. Santhosh Kumar
(For R-5 in WP.No.11982/99)
:O R D E R

P. SHANMUGAM, J.

These two writ petitions, in effect, seek for the same relief.

2. In the first writ petition, petitioner prays for a direction to re-transfer a sum of Rs.36,40,000/- to the petitioner Trust by quashing the order of the Tahsildar dated 9.12.1988. In the second writ petition, petitioner seeks for a mandamus to forbear the respondents from taking away from the Trust, the sum of Rs.61,30,00/-, being the fine amount payable by Swami Premananda.

3. The facts of the case are stated hereunder :-
Swami Premananda, a Sri Lankan national, came to India in the year 1983 and set up an ashram called Premananda Ashram near Tiruchy. Inside the ashram, he had set up educational institutions with hostels separately for girls and boys. According to the petitioner, the ashram was imparting

religious discourses, yoga classes and technical education. While so, on the basis of a criminal complaint against Premananda, Crime No.1183 of 1994 was registered on 17.11.1994 under Sections 142, 376 and later under Sections 302 and 201 of the Indian Penal Code before the Pudukkottai Police Station and Swami Premananda was arrested on 19.11.1994. Twelve charges were framed against Premananda and six others by the Sessions Court, Pudukkottai in S.C. No.7 of 19 96. The charges were that during the period between 1990 and 1994, Premananda (A-1) committed rape on 13 girls and that accused/A-2 to A-7 assisted and abetted the acts of A-1. It was also alleged that one Ravi, who tried to expose the misdeeds of A-1, was done to death and was buried in the ashram itself. One Divya Devi, the second accused in the case, could not be secured and was declared as a proclaimed offender and thereafter, the case was split up. The Sessions Court, by a judgment dated 20.8.1997, found Premananda/A-1 guilty of rape of 13 girls as well as the murder of Ravi and sentenced him for life imprisonment on both charges, directing the sentences to run consecutively. The Sessions Court also imposed a total fine of Rs.66,40,000/- on Premananda which was directed to be paid to each of the victim girls at the rate of Rs.5,10,000/- and the life sentences on the charges of rape were directed to run concurrently. The said conviction and sentence was confirmed by this Court insofar as Premananda is concerned in Criminal Appeal No.895 of 1997 by a judgment dated 12.12.2002, except for a modification in reference to one of the victim girls.

4. Swami Premananda had deposited various sums amounting to Rs.89,4 8,037/07 in seven banks in his name with 'either or survivor' facility with Divya Devi, who was the absconding accused in the criminal case. Just prior to the criminal complaint, a Trust by name Sri Premananda Trust is said to have come into existence with a corpus fund of Rs.501/-, wherein Swami Premananda is designated as the Managing Trustee for life. The Sessions Court directed the distribution of the fine amount of Rs.66,30,000/- to the victim girls. A day after Premananda was convicted and sentenced, i.e. on 21.8.1997, he is said to have expressed his desire that nothing belongs to him and that everything belongs to the Trust. When Premananda moved a bail application in Crl.M.P. No.6328 of 1998, by order dated 26.2.1998, a Division Bench of this court stayed the recovery of fine to the extent of Rs.30,00,000 /- and observed that the rest of the fine, if paid, shall be dealt with by the Sessions Court in the manner ordered in the judgment. However, Premananda did not remit the rest of the amount and his application for stay of recovery was dismissed by a Division Bench of this Court in its order dated 15.9.1998 in Cr.M.P. Nos.7023 to 7025 of 1997 and Cr.M.P. Nos.5291, 5649, 5651, 6024 of 1998. The Division Bench, apart from directing the amount already frozen to be invested in the respective banks, also directed Premananda to deposit the balance amount of fine of Rs.36,40,000/- within one month and if no such deposit was made, liberty was given to the Government to proceed further in accordance with law and attach the bank accounts shown in Items 6 and 7 of the counter affidavit therein. As the amount was not deposited as per the direction of the Division Bench of this court, the Collector of Tiruchy directed the Tahsildar in his order dated 8.12.1998 to attach the bank deposits to the tune of Rs.36,40,000/-. It is against the said notice of the Tahsildar dated 9.12.1998 Writ Petition No.11982 of 1999 came to be filed for a direction to re-transfer the attached amount of Rs.36,40,000/- to the

petitioner/Trust. The present Managing Trustee of the Trust, who claims to be the petitioner herein, had filed the following three suits :
(1) O.S. No.116 of 2000 } On the file of the Sub-court,
Filed on 28.10.1999 } Pudukkottai.

- For a declaration that the savings bank and fixed deposit amounts in the various bank accounts belong to the plaintiff and for possession of the amounts.

(2) O.S. No.117 of 2000 } On the file of the Sub-court,
Filed on 4.10.1999 } Pudukkottai.

- For a declaration in reference to the immovable properties.

(3) O.S. No.1076 of 1999 } On the file of the Sub-court,
Filed on 6.12.1999 } Tiruchirappalli.

- For a declaration that the savings bank and fixed deposit amounts in the various bank accounts belong to the plaintiff and for possession of the amounts.

All the three suits were decreed ex parte on 19.3.2001, 7.6.2001 and 13.7.2001 respectively. Petitioner now claims in these two writ petitions that they have got right over the amounts now in deposit and freezed based on the decree of the civil court and the respondents cannot take away the sum of Rs.61,30,000/- to meet the fine amount and to pay the compensation to the victim girls and hence the second writ petition.
5. Both these writ petitions were directed to be posted and we have heard the counsel for the petitioner on the question of maintainability of the writ petitions.
6. The points that arise for consideration are :
(i) Whether the petitioner has come with clean hands before this court ?
(ii) Whether the relief sought for is an abuse of the power of this court ?
(iii) Whether the decree obtained in the two suits namely O.S. Nos.116 and 117 of 2000 before the Sub-court, Pudukkottai and the suit O.S. No.1076 of 1999 on the file fo the Sub-court Tiruchirappalli is valid and enforceable ?
(a) Whether the suits suffer from suppression of material facts ?
(b) Whether the court fees paid is proper ?
(iv) Whether the prayer under Article 226 of the Constitution of India is maintainable ?

7. From the materials on record, it is clear that when the ashram was founded by Premananda, it was his individual endeavour and he has also been running it by appointing his own men and women and had designated Mathajis and Swamis. It is only 8th July 1994, a Trust by name Sri Premananda Trust was created with a corpus fund of Rs.501/-. Apart from this, till

Premananda was convicted as per the judgment in S.C. No.7 of 1996 dated 20.8.1997, the money was lying in the name of Premananda and the properties of the ashram were owned by him in his personal capacity. It is only a day after the conviction, i.e. 21.8.1997, he is said to have sent a resignation letter and expressed his desire that all the properties belong to the Trust as per his affidavit in W.P. No.11982 of 1999. Till date, no records have been produced to show that there was transfer of funds or the properties from Premananda to the Trust. Therefore, it is clear that the petitioner is trying to make believe that the Trust, by itself, has taken over the money lying to the credit of Premananda and also the properties. In the first writ petition, it is stated that Premananda, by a release deed, had transferred the entire properties to the Trust and that by a letter, he is said to have expressed his desire that everything belongs to the Trust. Therefore, admittedly, the so called expression of mere desire or the release deed are not valid and cannot operate as a valid transfer or acquisition of the properties and the funds by the Trust.

8. The plaintiff failed in his attempt by raising a similar contention before the Division Bench in the criminal miscellaneous petition, wherein the Division Bench, by its order dated 15.9.1998, while approving the freezing of the amount, directed the remaining fine amount of Rs.36,40,000/- to be paid or recovered. Thus, the amount to the tune of Rs.66,40,000/- is covered by the order of the Division Bench.

9. The petitioner/Trust had moved W.M.P. No.17051 of 1999 in the first writ petition for an order of injunction restraining the respondents from distributing the accrued interest arising out of the attached amount of Rs.36,40,000/-. A learned judge of this court, by order dated 3.8.2000, held that the Division bench had issued directions, which is a judicial order. It is not open to the petitioner to seek for any interim order, and if the petitioner has got any grievance, he has to move the Division Bench by impleading himself for suitable directions, if any.

10. In paragraphs 11 of W.P. No.11982 of 1999, the petitioner has stated as follows :-
"I submit that challenging the conviction in S.C. No.7 of 1996 on the file of the Principal Sessions Judge, Pudukkottai, the 5th respondent herein preferred an appeal before this Hon'ble High Court in C.A. No.897 of 1997. Pending appeal, the 5th respondent herein has moved the following applications before this Hon'ble High Court.

1) Crl.M.P. No.5291/98 - Stay the sentence of fine imposed on the petitioner in S.C. No.7/96.
2) Crl.M.P. No.5649/98 - to implead Tahsildar, Keeranur, Pudukkottai District.
3) Crl.M.P. No.5650/98 - to stay the proposed auction by the Tahsildar to recover the fine imposed on the petition.
4) Crl.M.P. No.5651/98 - to enlarge the petitioner either on bail or interim bail pending C.A. No.897/97.
5) Crl.M.P. No.6024/98 - to implead the Asst. Commissioner of Income Tax, Investigation-I, Tiruchirappalli.

While disposing all these applications, a Division Bench of this Hon'ble High Court in its order dated 15.9.1998 directed the 5th respondent herein to deposit the balance amount of fine i.e. Rs.36,40,000/- within one month from the date of receipt of this order. Failing which, the state is free to proceed further in accordance with law and to attach the bank accounts."

The plaintiff is, therefore, aware that the amount to the tune of Rs.66,40,000/- is covered by the order of the Division Bench.

11. By going through the plaints filed before the Sub-courts, it is seen that the subject matter of the suits is only the savings bank account and fixed deposits running to several lakhs, totalling approximately Rs.90,00,000/-, besides the immovable properties. The suit is valued under Section 28 of the Tamil Nadu Court Fees and Suits Valuation Act, 1985 and the court fee of Rs.200/- paid in each of the suit. On the face of it, it is clear that the amount and the property in question are not Trust property. They stand in the name of Premananda, the defendant in the suit, who remained exparte. Section 28 of the Act can be invoked only if there is a dispute regarding the right of management. Admittedly, Premananda is said to have resigned and has also expressed his desire that all the properties be that of the Trust. Therefore, there is no question of any dispute or recovery of the amount from the rival trustee. Bald allegations are made to the effect that a false case has been made against Premananda, the defendant in the suit and that the defendant has left the services of the ashram and that a new Board has been constituted and that they have decided to bring and consolidate the entire properties, both movables and immovables and that they have got more legal rights to enjoy the properties (money). According to the plaintiff, they apprehend that the defendants may attempt to deprive the plaintiff, who are the actual account holders of the money, from getting possession and enjoyment of the various bank balances by adopting illegal methods. While at one stage the plaintiff proceeds on the footing that Premananda has released the properties and expressed his desire disowning the properties, on the other hand, it is pleaded in the plaint that the Trust has decided to protect the properties from being squandered at the hands of defendants 1 and 2. The plaintiffs have not disclosed the order passed by the Division Bench dated 15.9.1998, though they have referred to the same in paragraph 18 of the first writ petition. If the same were referred in the plaint and if the orders passed by the Division Bench of the High Court were placed before the Sub-court, the court would not have granted the decree atleast to the extent of Rs.66,40,000/-. The plaintiffs are barred from raising the same here since they are party to the order in W.M.P. No.17051 of 1999 in W.P. No.11982 of 1999. Premananda and Kalananda are parties to the order dated 15.9.1998 passed in Crl.M.P. No.5291, 5649 to 5651, 6024 of 1997 and 7023 to 7025 of 1997 filed in Criminal Appeal Nos.897, 895 and 89 6 of 1996, but they remained ex parte in the suit.

12. If the plaintiffs have to seek for a declaration that the order passed by the Division Bench is not binding on them, the suit should have been valued under Section 25(d) of the Court Fees Act and not under Section 28. Thus, there is a clear suppression of vital materials and a fraud played on the Sub-courts. The Sub-courts, without considering whether the court fee paid is proper, whether the suits are maintainable in law and whether the plaintiff has been properly represented, have simply passed an

exparte decree in the suits. A decree passed in abuse of the process of the court or by practice of fraud on the court is a nullity and its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon. We are also of the view that the necessary and proper parties, namely the Tahsildar and the District Collector and the Banks concerned, are not impleaded in the suits; they have already ordered the freezing and attachment of the various accounts and have been deliberately omitted to be included in the suits.

13. We, therefore, proposed to give notice to the counsel as to why the decrees should not be declared as a nullity and hear his arguments on the said point.

14. After notice, the matters was heard on 21.2.2003.

15. The petitioner is aware of the fact that the Principal Sessions Judge, Pudukkottai, while convicting Swami Premananda, has directed recovery of the fine amount and that the District Collector, Pudukkottai had issued notice and initiated recovery proceedings and has attached the bank account. All these have been explicitly stated and admitted in paragraphs 11, 12 and 13 in W.P. No.11982 of 1999. W.M.P. No.17051 of 1999 filed for an interim injunction from attachment had been dismissed by a learned single Judge by an order dated 3.8.2000. The plaints in O.S. Nos.116 and 117 of 2000 on the file of the Subcourt, Pudukkottai refer to the sentence imposed by the Principal Sessions Judge in S.C. No.7 of 1996 and the total fine of Rs.66,40,000/- directed to be paid, but the facts set out above in the writ petition have been conveniently omitted to be mentioned therein. This is a clear, deliberate suppression of material facts before the Sub-court. In the plaint in O.S. No.1076 of 1999 on the file of the First Additional Sub-court, Tiruchy praying for a declaration and possession in reference to certain fixed deposits, they have chosen to refer to the attachment proceedings. The plaint having been filed subsequent to the filing of the writ petition, they are fully aware of the orders of the learned single Judge and the Division Bench as well as the notices issued by the District Collector and the Tahsildar, but they have deliberately omitted to implead the necessary and proper parties namely the Tahsildar and the District Collector, Pudukkottai in the plaint. W.P. No.11982 of 1999 was filed on 12.7.1999, the affidavit having been sworn on 28.4.1999 at Tiruchy. The suits O.S. Nos.116 and 11 7 of 2000 were filed in October, 1999. The value of the suits has not been stated even in the decree, but a court fee of Rs.200/- is paid. Whereas, the value is O.S. No.1076 of 1999 is shown to be Rs.84,86 ,598/- and a court fee of Rs.200/- paid under Section 28 of the Tamil Nadu Court Fee and Suits Valuation Act.

16. The Supreme Court, in S.P. CHELGALVARAYA NAIDU VS. JAGANNATH [1 994 (1) S.C.C. 1], hals held that a decree obtained by nondisclosure of vital document amounted to fraud on court and hence, liable to be set aside. Their lordships observed as follows :-

"A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. A

litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party.

One who comes to the court, must come with clean hands. A person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation. A judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decree - by the first court or by the highest court - has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings."

17. In GOWRI SHANKAR VS. JOSHI AMBA SHANKAR FAMILY TRUST [A.I.R. 19 96 S.C. 2202], while referring and approving the judgment in CHENGALVARAYA NAIDU's case referred above, the Supreme Court held that the question whether there is a bonafide purchase subsequent to permission without notice is immaterial if the trustees had obtained an order suppressing material facts. In KIRAN SINGH VS. CHAMAN PASWAN [A.I.R. 1 954 S.C. 340], a Constitution Bench of the Supreme Court has held that it is a fundamental principle that a decree passed by a court without jurisdiction is a nullity and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial or whether it is in respect of the subject matter of the action, strikes at the very authority of the court to pass a decree and such a defect cannot be cured even by consent of parties.

18. Applying the principles set out above, we find that the petitioners in the case on hand have obtained a decree by suppressing the material facts and by committing a fraud on the court and therefore, the decrees so obtained are liable to be ignored.

19. The counsel for the petitioner relied upon a judgment of the Supreme Court in KRISHNA SINGH VS. MATHURA AHIR [A.I.R. 1980 S.C. 717] and contended that the property belongs to the Trust. The question that arose for consideration in the said case and the facts therein are entirely different from the case on hand. In our case, the money and the property stands in the name of an individual and therefore, the submission that the property belonging to the Math is in fact attached to the office of the Mahant and passed by inheritance to no one who does not fill the office cannot be applied to this case.

20. The Sessions Case against Swami Premananda having attracted wide publicity, it was a sensational case. It is very difficult to understand as to how the Sub Judge of the same place would have been oblivious to the case and has omitted to notice the fine imposed and the direction to recover the fine amount. Inspite of the averment made in the plaint to the effect that the Board of Trustees had decided to bring and consolidate the entire properties, both movable and immovable, including the various bank balances standing in the name of defendants 1 to 4, the Sub-court has not

bothered to find out the documents under which such a transfer could have taken place and the question whether by a unilateral resolution of the subsequent Board of Trustee, without the direction of Swami Premananda to the bank and a letter, the amounts could have been transferred in the name of the Trust without impleading the Bank concerned was not considered at all. The learned Sub Judge ought to have taken into consideration all these facts when such a vast amount running to Rs.90 lakhs is sought to be declared and its possession ordered before passing an exparte decree in favour of the petitioner. We are constrained to observe that the learned Sub Judge has miserably failed to apply his judicial mind and discretion properly before passing an exparte decree of this nature. It is crystal clear that the suit is a collusive one and is filed only to get at the various bank accounts and to keep it out of the reach of the recovery proceedings, the fine imposed and the direction issued by this court. The learned Sub Judge ought to have gone into the question whether Section 28 of the Act will apply in the absence of any dispute between the present Trustees before valuing the suits under Section 28 of the Act and the maintainability of the suit. The suits are filed on behalf of the Trust without being represented by all the Trustees; the Trust is not a legal entity on its own; the reference to the total fine of Rs.66,40,000/- has been made and it is admitted that the amount stands in the name of Premananda; and a court fee is paid under Section 28 of the Court Fees Act as though there is a dispute in the management of the Trust.

21. A learned Judge of this court, in A.S.M. ABDUL RAHIM SAHEB VS. MADRAS WAKF BOARD [1965 (1) M.L.J.], has taken the view that Section 28 will be attracted only if there is a dispute between the plaintiff and the rival trustees to the office of the Trustee. A Division Bench of this court, in MEENAKSHI SUNDARAM CHETTIAR VS. VENKATACHALAM CHETTIAR [1979 (1) M.L.J. 398], has held that if the fee paid by the plaintiff is sham, nominal and dishonest, the court had power to direct the plaintiff to pay the appropriate court fee after valuing his claim in the property. Such valuation of the plaintiff's claim should, no doubt, be based on the plaint allegations. A careful reading of the plaint allegations in this case would reveal that there is and there cannot be a dispute between the plaintiff on the one hand and the defendants on the other. As a matter of fact, in W.P. No.11982 of 19 99, it is averred by the plaintiff that Swami Premananda had expressed his willingness to hand over his position of Managing Trustee and that by a release deed, had transferred the entire properties, including the contributions, to the Trust. Conspicuously, the alleged release deed or the alleged letter did not form part of the suit and in any event, that was subsequent to the conviction by the Sessions Court.

22. For all the above reasons, we are clearly of the view that the exparte decrees in the suits O.S. Nos.116 of 2000 and O.S. No.1076 of 1999 were obtained by abuse of the process and a fraud committed on the court and therefore, they have no effect or consequence and they are non-est in law for the following reasons :

(1) The subject matter, viz. The amounts in O.S. No.116 of 2000 and O.S. No.1076 of 1999 are covered by the orders of the Division Bench of this court.

(2) The petitioner is aware of the same.
(3) The petitioner has suppressed these facts and the positive direction passed by the Division Bench and the dismissal of the W.M.P. for injunction.
(4) The petitioner has not impleaded the necessary and proper parties, viz. the District Collector, the Tahsildar and the respective Banks.
(5) The petitioner has not paid the proper court fees.
(6) The petitioner has misled the civil courts on all accounts.

23. Lastly, the prayer in the writ petitions as such seeking for a re-transfer of the attached amount in the light of the order of the Division Bench dated 15.9.1998 cannot be granted. The petitioner cannot seek indirectly what he cannot achieve directly. The second writ petition also will go contrary to our direction contained in the judgment in the criminal appeal as well as the order passed by this court on 15.9.1998. The prayer is in the realm of contract of a civil nature.

24. For the above reasons, both the writ petitions are liable to be dismissed and they are accordingly dismissed. No costs. Consequently, the connected W.M.Ps. are closed.

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Index : Yes
Internet : Yes

To

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